

No. 11,980

IN THE

United States Court of Appeals
For the Ninth Circuit

WILSON BROS. & Co.,

Petitioner on Review,

VS.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

REPLY BRIEF FOR PETITIONER.

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May it please the Court:

Of the 17 pages of the brief for the respondent only one (page 13) attempts to touch the point of the review. The remainder either duplicate uncontroverted matter stated in our opening, or show the literal application of the statute to the facts found.

Respondent's page 13 merely presents a quotation from *O'Sullivan Rubber Co. v. Commissioner*, 2 Cir., 120 F. 2d 845. That case was correctly decided, but does not touch our review point. There, the amount of undistributed net income for the tax year 1935 was not disputed, and the corporation fell within the statutory definition of a "personal holding company" under Act 1934, § 351(b)(1). That was the Act and section that originated the levy of a surtax

on “undistributed” income of a “personal holding company”. It compelled distribution of at least 80 per cent of income, thereby through a fixed percentage eliminating the difficulties under § 102 of reaching undistributed income of corporations generally when accumulated without distribution. §§ 102 and 351 simply divided corporations into two mutually exclusive classes with respect to the Commissioner’s taxing reach of accumulations. The respective *fields of application* of the two sections were within clear legislative intent. In result, each section was a taxing statute, an *independent* one.

Three years later in 1937 came the Act of that year—not an ~~and~~ independent taxing statute, but a dependent statute aimed generally against evasion loopholes in the taxing statute, which had become the Act of 1936. It was not aimed at personal holding companies alone, but at evasion generally. The act of 1937 was a *dependent* statute.

It is to those distinctions that our opening brief was addressed, and the brief for respondent contains no real answer.

Dated, San Francisco, California,
October 11, 1948.

Respectfully submitted,

GEORGE M. NAUS,

Attorney for Petitioner.